

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

G. DANIEL WALKER,

Plaintiff,

v.

GAVIN NEWSOM, et al.,

Defendants.

No. 2:20-cv-2243 TLN AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with an action for relief under Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C § 12132, and Section 504 of the Rehabilitation Act of 1973 (“RA”), 29 U.S.C. § 794. Currently before the court are plaintiff’s motion for summary judgment (ECF No. 23) and defendant’s request to defer consideration of the motion (ECF No. 27).

On July 11, 2022, the scheduling order in this case was issued and set out deadlines for the completion of discovery and filing of dispositive motions. ECF No. 22. Discovery is set to end on November 11, 2022, and dispositive motions are due by February 3, 2023. *Id.* at 5. On August 4, 2022, plaintiff filed a motion for summary judgment. ECF No. 23. Defendants have now moved to defer consideration of the motion under Federal Rule of Civil Procedure 56(d). ECF No. 24.

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1           Rule 56(d) provides that “[i]f a nonmovant shows by affidavit or declaration that, for  
 2 specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer  
 3 considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take  
 4 discovery; or (3) issue any other appropriate order.” “The requesting party must show: (1) it has  
 5 set forth in affidavit form the specific facts it hopes to elicit from further discovery; (2) the facts  
 6 sought exist; and (3) the sought-after facts are essential to oppose summary judgment.” Fam.  
 7 Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp., 525 F.3d 822, 827 (9th Cir. 2008)  
 8 (citation omitted).

9           Plaintiff filed his motion for summary judgment less than a month after discovery opened.  
 10 Defendant argues that as a result the motion is premature because he has not yet had a meaningful  
  opportunity to pursue discovery. ECF No. 27. Defendant’s motion is accompanied by a  
 11 declaration from counsel that specifically identifies the evidence he hopes to obtain through  
 12 discovery. Id. at 8-10. He avers that, at a minimum, it is necessary to depose plaintiff to obtain  
 13 the information he seeks, and that plaintiff’s deposition is scheduled to take place on September  
 14 30, 2022. Id. at 9-10. There are also indications that it may be necessary to obtain complete  
 15 copies of the records plaintiff has attached to his summary judgment motion. Id. at 2, 8.  
 16 Moreover, plaintiff’s own filings indicate that the motion was prematurely filed. Plaintiff’s  
 17 statement of facts states that “[a]dditional undisputed facts may occur if defendants [sic] counsel  
 18 answers the REQUEST FOR ADMISSIONS and INTERROGATORIES served on June 10,  
 19 2022”<sup>1</sup> (ECF No. 25 at 4), and plaintiff has already filed one addendum to his declaration (ECF  
 20 No. 26). The court does not accept piecemeal filings and plaintiff is not permitted to continue  
 21 supplementing his motion simply because he filed it before discovery was complete. For these  
 22 reasons, the court finds the motion for summary judgment was prematurely filed and will be  
 23 vacated. Plaintiff may either file a new motion for summary judgment that includes all of his  
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 26 <sup>1</sup> The court notes that plaintiff was previously advised that these discovery requests were  
  premature because defendant had not yet answered the complaint and that as a result defendant  
  had no obligation to respond. ECF No. 18. It is unclear whether plaintiff re-served these requests  
  after the scheduling order issued or whether the parties came to an agreement to treat them as  
  served after discovery opened.

1 evidence and arguments after the close of discovery or, if he has nothing further to add to what  
2 has already been filed, he may reinstate the August 4, 2022 motion by filing a notice with the  
3 court advising that he is reinstating the motion.

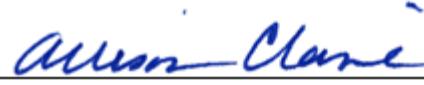
4 Accordingly, IT IS HEREBY ORDERED that:

5 1. Defendant's motion to defer plaintiff's motion for summary judgment (ECF No. 27) is  
6 GRANTED.

7 2. Plaintiff's August 4, 2022 motion for summary judgment (ECF No. 23) is  
8 VACATED.

9 3. After the close of discovery, plaintiff may either (1) file a new motion for summary  
10 judgment that includes all of his evidence and arguments or (2) reinstate the August 4, 2022  
11 motion by filing a notice with the court advising that he is reinstating the motion.

12 DATED: August 19, 2022

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14 ALLISON CLAIRE  
15 UNITED STATES MAGISTRATE JUDGE

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